IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 591 of 1999

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

BHAYA KACHARA

Appearance:

MR N.D. GOHEL, APP for Petitioner

MR NIRAV C THAKKAR for Respondent

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 07/03/2000

ORAL JUDGEMENT

1. This is a revision application under section 397 read with section 401 of Criminal Procedure Code at the instance of the State of Gujarat, challenging the order passed by the Sessions Court, Jamnagar, in Sessions Case No.8/99, below Application Exh.3.

2. The aforesaid application Exh.3 was given by the

original complainant, wherein the accused were alleged to have committed offence under section 302 read with section 114 of IPC and section 135(1) of the Bombay Police Act. As a result of the aforesaid complaint, an investigation was launched and ultimately the accused was charge-sheeted resulting in the aforesaid criminal case.

3. By way of the aforesaid application Exh.3 the complainant, for the reasons set out in greater detail in the said application, required the court to pass appropriate orders for further investigation inasmuch as according to the complainant the investigation conducted by the police is insufficient and incomplete.

4. The Sessions Court, by order below Exh.3, rejected the said application. Hence the present revision at the instance of the State.

5. There was some controversy at least before the Sessions Court as to whether the Sessions Court had power to issue directions to police for further investigation under section 173(8) of the Criminal Procedure Code. However, that controversy no longer survives before this court in view of the various decisions of this court in (i) 1985 GLR 1056, (ii) 1985(1) GLR 313 and (iii) 1989(1) GLH 148.

6. No doubt, such directions can be given by the appropriate court, and that this power to give directions for further investigation should be exercised sparingly and not as a matter of routine.

7. It is pertinent to note that it is not merely the complainant came forward before the court to complain about inadequate or incomplete investigation. Even the learned Additional P.P. for and on behalf of the State had argued before the Sessions Court that the investigation by the police appears to be incomplete. In actual fact his submission as recorded by the Sessions Court is to the effect that according to him it is true that the investigation by the police is incomplete or inadequate. One significant aspect of which the Sessions Court has not taken note of is that when an identification parade was held, the complainant was not kept present.

8. The Sessions Court, while rejecting the application for further investigation, was influenced by only one fact viz. that Hitendrasing who is alleged to be an eye witness, in his earlier statement recorded on 19th August 1998, had only referred to two persons who

were holding the injured while he was assailed by the accused (which injured ultimately died) without naming these two persons, whereas by a subsequent fax message to the DSP, and in his subsequent statement before the police recorded on 27th August 1998, he specifically stated that these two persons who were holding on to the deceased during the attack by the accused were named Megha Nathu Gadvi and Vejanand Nathu Gadvi. The fact appears to have impressed the Sessions Court is only that the first statement does not contain the names of these two persons, whereas the second statement contains the names of two persons holding on to the deceased during the attack by the accused.

8.1 It is pertinent to note that the Sessions Court has glossed over an important aspect by merely making a casual observation that this Hitendrasing has not given any reasonable or satisfactory explanation as to why these two persons were not named in his earlier statement of 19th August 1998. This observation of the Sessions Court is neither legitimate nor justified. Even a casual perusal of the statement of Hitendrasing dated 27th August 1998 makes it clear that he has specifically stated that in his earlier statement he was unable to give name of the two persons concerned because their names were unknown to him at that point of time.

9. We are in the context of the present controversy not concerned with whether this explanation is acceptable or not, or whether this person Hitendrasing was in fact an eye witness or not. That is a matter to be decided on the evidence which is yet to be recorded before the Sessions Court.

10. The sum and substance of the controversy is that where the complainant, an eye witness and the prosecution all agree and come to the court with the common cause that the investigation is incomplete and therefore requires to be conducted further, the same cannot be casually brushed aside on the only submission that it is likely to delay the trial.

11. On the facts and circumstances of the case I am satisfied that the order passed by the Sessions Court below Exh.3 and impugned in the present revision deserves to be quashed and set aside. It is directed that the police shall conduct further investigation as may be necessary on the facts and circumstances of the case, and shall complete such investigation as expeditiously as possible and preferably before 15th May 2000. Consequential directions, if and when necessary, shall be

given by the Sessions Court in this regard.

12. This revision is accordingly allowed and rule is made absolute. Interim relief stands vacated. D.S. permitted.

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